

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MATTHEW J. KING,

Plaintiff,

v.

AMY CALDERWOOD, et al.,

Defendants.

Case No. 2:13-cv-02080-GMN-PAL

**ORDER**

(Mot. Investigator – Dkt. # 79)  
(Mot. Service Subpoenas – Dkt. #97)

This matter is before the court on Plaintiff Matthew J. King's Motion for Appointment of Independent Investigator and Associated Fees (Dkt. #79) and Motion for Service of Subpoenas Duces Tecum (Dkt. #97). This proceeding is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and LR 1-3 and 1-9 of the Local Rules of Practice.

**I. Background**

Mr. King is a prisoner proceeding in this civil rights action *pro se* and *in forma pauperis*. This case arises from Mr. King's allegations, pursuant to 28 U.S.C. § 1983, that Defendants violated his Eighth Amendment rights by denying him access to substance abuse treatment for over two years, which caused his Hepatitis-C to go untreated and has allowed the progressive effects of the disease to manifest. *See* Complaint (Dkt. #7).

On September 24, 2013, Mr. King filed his complaint in the Eighth Judicial District Court of Nevada. Defendants subsequently removed the case to this Court. *See* Petition for Removal (Dkt. #1). Upon screening Mr. King's Complaint, the Court determined that it stated viable claims for deliberate indifference to serious medical need in violation of the Eighth Amendment. *See* Screening Order (Dkt. #6). On February 5, 2015, the Court entered a Scheduling Order (Dkt. #42). Mr. King later filed a Motion for Enlargement of Time (Dkt. #48) to conduct discovery, which Defendants did not oppose. *See* Defs.' Response (Dkt. #51). The

1 Court granted Mr. King's motion and extended the deadlines stated in the Scheduling Order by  
 2 45 days. *See* Order (Dkt. #77). The parties did not file any other requests for extensions of time  
 3 to conduct discovery, therefore, discovery closed on July 6, 2015.

## 4 **II. LEGAL ANALYSIS OF MR. KING'S MOTIONS**

### 5 **A. Motion for Appointment of Independent Investigator (Dkt. #79)**

6 In this motion, Mr. King asks the Court to assign him an independent investigator or,  
 7 alternatively, to grant an \$8,000 stipend that he will use to locate a private investigator who will  
 8 conduct all necessary investigations. Motion (Dkt. #79) at 2–3. Mr. King argues that his current  
 9 incarceration hinders his ability to properly contact witnesses and retrieve documents necessary  
 10 to formulate a trial strategy. *Id.* Mr. King also reasons that an investigator is warranted because  
 11 the Court denied Mr. King's prior motion requesting the appointment of counsel. *Id.*; *see also*  
 12 Mot. for Appoint. of Counsel (Dkt. #46); Order (Dkt. #75). The Court has considered the  
 13 Motion (Dkt. #79) and Defendants' Response (Dkt. #85). No reply brief was filed.

14 The motion provides no legal basis for the Court to appoint an investigator or grant an  
 15 \$8,000 stipend. The Supreme Court has held that an inmate's constitutional right of access to  
 16 courts does not impose "an affirmative obligation on the states to finance and support prisoner  
 17 litigation." *Lewis v. Casey*, 518 U.S. 343, 384 (1996). Likewise, nothing in the Federal Rules of  
 18 Civil Procedure or Ninth Circuit cases authorize or require the courts to finance or subsidize fees  
 19 and costs associated with prosecuting a civil action. *See, e.g., Johnson v. Moore*, 948 F.2d 517,  
 20 521 (9th Cir. 1991). When a party obtains authority to proceed *in forma pauperis* ("IFP"), the  
 21 party is permitted to maintain an action to conclusion without the necessity of prepayment of any  
 22 additional fees or costs or the giving of a security therefor. However, granting IFP status "does  
 23 not waive the applicant's responsibility to pay expenses of litigation which are not covered by 28  
 24 U.S.C. § 1915." LSR 1-8. Section 1915 authorizes only three types of expenses related to  
 25 preparing the record on appeal and preparing transcripts,<sup>1</sup> it does not extend to discovery and  
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27 <sup>1</sup> After granting permission for a party to proceed *in forma pauperis*, the court may direct payment by the  
 28 United States of three specific expenses: (1) printing the record on appeal in any civil or criminal case, if  
 such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United

1 litigation related expenses such as a private investigator. Therefore, the Court denies this  
2 motion.

3 **B. Motion for Service of Subpoenas Duces Tecum (Dkt. #97)**

4 In this motion, Mr. King asks the Court to direct the United States Marshal (“USM”) to  
5 serve subpoenas on ten individuals who work for the Nevada Department of Corrections and are  
6 named throughout his grievances. Motion (Dkt. #97) at 2–3. The subpoenas request documents  
7 related to Mr. King’s grievances with the prison. The motion states that Mr. King attempted to  
8 have the USM serve the subpoenas and informed them that the Court granted him IFP status but  
9 his request was denied because he did not obtain an order from the Court authorizing the USM to  
10 serve the subpoenas. *Id.* at 3–4. Thus, Mr. King now requests an order pursuant to 28 U.S.C.  
11 § 1915(d) directing the USM to serve his subpoenas. The Court has considered the Motion (Dkt.  
12 #97) (filed Sept. 9, 2015), Defendants’ Response (Dkt. #100), and Mr. King’s Reply (Dkt. #107).

13 Mr. King’s motion lacks merit for two reasons. First, the Court will not direct service of  
14 subpoenas after the close of discovery. Subpoenas issued under Rule 45 of the Federal Rules of  
15 Civil Procedure are discovery tools and they must be utilized within the time period permitted  
16 for discovery in a case. *See, e.g., Integra Lifesciences I, Ltd. V. Merck KGaA*, 190 F.R.D. 556,  
17 561 (S.D. Cal. 1999). Since discovery in this case closed on July 6, 2015, and the parties did not  
18 request an extension to complete further discovery, service of subpoenas now would be  
19 improper.

20 Second, and more importantly, the Court finds that Mr. King’s subpoenas seek  
21 documents that are duplicative of his discovery requests to Defendants. The court’s  
22 authorization for service of a subpoena duces tecum requested by an *in forma pauperis* plaintiff  
23 is subject to limitations. Limitations include the relevance of the information sought as well as  
24 the burden and expense to the non-party in providing the requested information. Fed. R. Civ. P.  
25 26, 45. District court may consider the “cumulative impact” of duplicative requests for  
26 documents when deciding whether to limit discovery or quash a subpoena. *See, e.g., Exxon*

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28 States magistrate judge in any civil or criminal case, if such transcript is required by the district court; and  
(3) printing the record on appeal if such printing is required by the appellate court. 28 U.S.C. § 1915(c).

1 *Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d 774, 780 (9th Cir. 1994) (citation omitted). An  
 2 IFP plaintiff's motion for service of a subpoena duces tecum should be supported by clear  
 3 identification of the documents sought and a showing that the records are obtainable only  
 4 through the identified third party. *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697  
 5 (D. Nev. 1994) ("The court may limit discovery where the documentation sought is unreasonably  
 6 cumulative or duplicative.").

7 Here, the motion asserts that Mr. King could not obtain the discovery seeks by subpoena  
 8 through the normal discovery process because the individuals named in the subpoenas are not  
 9 named defendants in this case. However, the grievances are records of the NDOC, not the  
 10 individual current or former employees of NDOC. Mr. King was allowed to obtain relevant  
 11 discovery materials by serving written discovery requests on Defendants and their counsel.  
 12 Defendants are senior officials with the Nevada Department of Corrections, which is the  
 13 custodian of Mr. King's grievance records and medical files. Furthermore, when the Court  
 14 compared Mr. King's subpoenas against his written discovery requests to Defendants, it is clear  
 15 that the subpoenas request the same documents. *Compare* Subpoenas (Dkt. #97-1) *with* King's  
 16 Request for Discovery (Dkt. #87) at 14–19. Therefore, the Court finds that Mr. King's subpoenas  
 17 are duplicative of other discovery requests. The motion is as untimely and duplicative<sup>2</sup> For he  
 18 reasons stated,

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 23 <sup>2</sup> The Court also notes that § 1915 authorizes only three types of expenses related to preparing the record  
 24 on appeal and preparing transcripts. The statute does not authorize the court to direct payment of other  
 25 litigation fees, which include those related to subpoenas. *See Gorton*, 793 F. Supp. 2d at 1184 (discussing  
 26 the limitations of § 1915(c) for litigation related expenses); LSR 1-8. Mr. King asserts that his request is  
 27 supported by § 1915(d), which states that "officers of the court shall issue and serve all process, and  
 28 perform all duties in such cases." Although the plain language of § 1915 provides for service of process  
 for an indigent's witnesses, "it does not waive payment of fees or expenses for those witnesses." *Tedder*  
*v. Odel*, 890 F.2d 210, 211 (9th Cir. 1989) (finding that § 1915 does not permit a waiver of the witness  
 fees to be tendered with the subpoena); *see also Dixon v. Ylst*, 990 F.2d 478, 480 (9th Cir. 1993). Thus,  
 even if discovery was still open and Mr. King showed that the documents sought by subpoena were not  
 duplicative, Mr. King's IFP status would not include any subpoena fees.

1           **IT IS ORDERED** that Plaintiff Matthew J. King's Motion for Appointment of  
2 Independent Investigator and Associated Fees (Dkt. #79) and Motion for Service of Subpoenas  
3 Duces Tecum (Dkt. #97) are DENIED.

4           Dated this 19th day of November, 2015.

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6 PEGGY A. LEEN  
7 UNITED STATES MAGISTRATE JUDGE  
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